IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER

M/s Pinkline Exim Private Limited and Anr. Vs. U.O.I. & Anr.

D.B.CIVIL WRIT PETITION NO. 193/2006.

Under article 226 and 227 of the Constitution of India.

Date of Order :: 25.1.2006

PRESENT

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE R.P.VYAS

Mr Anand Mishra)
Mr.S.P. Sharma)for the petitioner.

BY THE COURT (PER HON'BLE JUSTICE R.BALIA):

Having heard learned counsel for the petitioner we are of the opinion that no case for invoking extra ordinary jurisdiction is made out.

The petitioner is a private limited company and claims to be 100% export oriented Unit.

As per the averments made by the petitioner, the petitioner was served with the show cause notice by the Excise Officer dated 30.3.2004 stating that while making clearances of goods in

Domestic Tariff Area, in the month of March and April, 2003, the assessee has wrongly availed the benefit of Notification No. 8/97- CE dated 1.3.1997 as well as undervalued the goods and thereby evaded central excise duty to the tune of Rs.5,38,52,735/-.

After considering the reply to show cause notice submitted by the petitioner which is registered as 100% Export Oriented Unit, the demand stated in the show cause notice was affirmed, rejecting the representation submitted by the assessee vide order dated 30.6.2004 by the Commissioner. Penalty equal to tax demand was also imposed. In addition, a penalty of Rs.50 lacs was imposed on respondent No.2.

The assessee preferred an appeal against the aforesaid order and also prayed for staying the demand.

The application for interim relief was decided on 08.12.2004 directing that the petitioner No.1 may pre-deposit Rs.4 crores against total demand of over Rs.10 croses and petitioner No.2, a Director of the company makes a pre-deposit of Rs.10 lacs. The compliance

report was directed to be made on 17.2.2005.

However, the amount was not deposited, on 7.2.2005, an application was moved for modification of the interim order primarily on the ground that because of the closure of the Unit, the entire demand should be stayed unconditionally. The application dated 7.2.2005 was rejected vide order dated 17.2.2005 pointing out that the earlier application was rejected by a detailed order, and no ground for modification is made out. While rejecting the application for modification, the Tribunal also dismissed the appeal observing that since the petitioner has failed to comply with the requirement of pre-deposit. The order of dismissal of appeal was issued to the assessee on 23.2.2005.

Thereafter, the petitioner applied for restoration of appeal without making any explanation for not depositing the amount but strictly on the ground that he should be granted unconditional freedom from pre-deposit. The application was also dismissed on 27.6.2005. No one has appeared on behalf of the petitioner. The Tribunal observed that since compliance of pre-deposit has not been made, appeal cannot be

restored.

After about six months on 21.12.2005, this petitioner moved another application seeking direction to quash all the orders referred above including the order of Commissioner dated 21.12.2005.

The requirement of pre-deposit before the appeal is heard is the requirement of statute. The petitioner seeking to avail the remedy of appeal is not willing to fulfill the condition without which appeal could not be heard. As noticed above, the Tribunal has not thought it fit to stay the demand in entirety, but has asked for pre-deposit of part of demand only. The fact that the appeal for grant of unconditional stay cannot be the sole ground for bye-passing the alternate remedy and without fulfilling the condition, the petitioner cannot insist on hearing of the appeal are not disputed. Moreover, the petitioner having not challenged the order dated 20.12.2004 before the appeal was decided and did not make any effort for extension of time to deposit the pre-deposit amount, we are of the opinion that it is too late for the petitioner to seek extra-ordinary jurisdiction of

this Court to restore the appeal to be heard on merits without pre-deposit.

When it was put to the learned counsel for the petitioner that if the petitioner is still willing to get the appeal decided on merit by depositing the demand as directed by the Tribunal, then his response was in negative.

We are of the opinion, in these circumstances, no interference in extra-ordinary jurisdiction is made in the direction issued by the appellate authority on the pre-deposit of the amount before the appeal could be heard keeping in view primarily the order passed by the Commissioner.

However if the petitioner is willing to make compliance of order dated 8.12.2004, it may approach the Tribunal for recalling the order of dismissal of appeal for hearing on merits.

The writ petition fails and is hereby dismissed.

(R.P.VYAS), J. (RAJESH BALIA),J.

/rm